

Brownfields Redevelopment – A Restoration Policy Opportunity for the US Army?

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BROWNFIELDS REDEVELOPMENT - A RESTORATION POLICY OPPORTUNITY FOR THE U.S. ARMY?

ABSTRACT

The U.S. Army, as a part of the DoD complex and owner of a large number of environmentally distressed sites, has a significant role to play in the restoration program confronting the U.S. Army mechanism. This role can potentially facilitate this restoration process, even if it requires a significant "rethinking" of how the "Army does business" and is thus worthy of consideration. This report summarizes the findings of a study undertaken to examine the potential for the Brownfields Redevelopment Program proposed by the EPA for urban areas to impact Army restoration policy. The term "Brownfields" has been used to describe sites that "are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination." The report summarizes the current restoration mechanisms being employed by the Army and then presents an overview of the Brownfields approach. The potential for Brownfields Redevelopment to become an additional mechanism for the Army is discussed and recommendations for future actions to explore this initiative are provided. It is considered that preliminary arguments regarding the non-applicability of Brownfields Redevelopment for military sites are non-persuasive. The Brownfields approach is not to be considered as a replacement method for the existing programs currently in place to restore Army lands, but rather valued as an alternative method which may be applicable at some sites and may prove to be a more cost-effective and efficient way to deal with restoration. It is considered that Brownfields Redevelopment Initiative does represent an alternative restoration policy option for the Army and is worthy of further study.

To conduct further evaluation of the merits of the creation of an Army Brownfields Redevelopment program to complement existing restoration programs, it is recommended that a study be conducted by a contractor from outside the DoD complex to fully identify all legislative, technical and economic advantages of pursuing such an initiative. The contractor should be required to work closely with personnel from within the DoD complex, as well as other federal and state agencies to ensure that all constraints are fully addressed.

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ACRONYMS

ACSIM	Assistant Chief of Staff for Installation Management
AEC	Army Environmental Center
ASA/IL&E	Assistant Secretary for the Army (Installations, Logistics and Environment)
ASTSWMO	Association of State and Territorial Solid Waste Management Officials
BCA	Base Closure Account
BC	Base Realignment and Closure
CERLCLA	Comprehensive Environmental Response, Compensation and Liability Act
CERCLIS	Comprehensive Environmental Response, Compensation, and Liability Information System
CERFA	Community Environmental Response Facilitation Act
CRA	Community Reinvestment Act
CSI	Common Sense Initiative
DASA/ESOH	Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health)
DERA	Defense Environmental Restoration Account
DERP	Defense Environmental Restoration Program
DERTF	Defense Environmental Response Task Force
DoD	Department of Defense
DOJ	Department of Justice
DOL	Department of Labor
EJ	Environmental Justice
EPA	Environmental Protection Agency
EZ/EC	Enterprise Zones/Enterprise Communities
FLUWG	Future Land Use Working Group
FUDS	Formerly Used Defense Sites Program
HMTRI	Hazardous Materials Training and Research Institute
HUD	Department of Housing and Urban Development
IC	Installation Commander
IRM	Institute for Responsible Management
IRP	Installation Restoration Program
MACOM	Major Army Command
MOU	Memorandum of Understanding
NEJAC	National Environmental Justice Advisory Council
NEPA	National Environmental Policy Act
NFA	No Further Action
NPL	National Priorities List
OPED	Office of Planning and Economic Development
PA/SI	Preliminary assessment and Site Inspection
PP	Proposed Plan
PRP	Potentially Responsible Party
RA	Remedial Action
RBCA	Risk-Based Corrective Action
RCRA	Resource Conservation and Recovery Act
RD	Remedial Design
RI/FS	Remedial Investigation and Feasibility Study
ROD	Record of Decision
SARA	Superfund Amendments and Reauthorization Act
USACE	U.S. Army Corps of Engineers
UST	Underground Storage Tank

TABLE OF CONTENTS

CHAPTER 1. INTRODUCTION	1
CHAPTER 2. CURRENT RESTORATION PROGRAMS AND MECHANISMS	3
2.1 The Installation Restoration Program	3
2.2 The Formerly Used Defense Sites Program	4
2.3 The Base Realignment and Closure Cleanup Program	4
2.3.1 The Defense Environmental Restoration Account	5
2.3.2 The Defense Environmental Restoration Program	5
CHAPTER 3. BROWNFIELDS REDEVELOPMENT	7
3.1 Brownfields Action Agenda	7
3.1.1 Brownfields Pilot Studies	8
3.1.2 Clarification of Liability, and Cleanup Issues	8
3.1.3 Partnerships and Outreach	8
3.1.4 Job Development and Training	8
3.2 Comparison of Brownfields and BRAC Programs	8
3.3 Proposed Army Brownfields Policy Evaluation	10
APPENDIX A: BROWNFIELDS PILOT RESOURCE KIT	13

List of Tables

Table 1. Comparison of Brownfields Redevelopment and BRAC Program (after FLUWG, 1996)	9
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CHAPTER 1. INTRODUCTION

Despite the exponential growth in environmental legislation over the past four decades, the United States is still confronted with a monumental task to restore environmentally distressed lands. The U S. Army, as a part of the DoD complex and owner of a large number of distressed sites, has a significant role to play in this restoration program. Any mechanism which can potentially facilitate this restoration process, even if it requires a significant "rethinking" of how the "Army does business," is thus worthy of consideration. This report summarizes the findings of a study undertaken to examine the potential for the Brownfields Redevelopment Program recently proposed by the EPA to impact Army restoration policy. The report summarizes the current restoration mechanisms being employed by the Army, and then presents an overview of the Brownfields approach. The potential for Brownfields Redevelopment to become an additional mechanism for the Army is discussed, and recommendations for future actions to explore this initiative are provided.

CHAPTER 2. CURRENT RESTORATION PROGRAMS AND MECHANISMS

Restoration of the Army complex is currently being achieved under the auspices of a number of programs including:

- The Installation Restoration Program
- The Formerly Used Defense Sites Program
- The Base Realignment and Closure Cleanup Program

Guidelines for restoring sites under these programs include incorporation of mechanisms for early accomplishment and continued public involvement in these activities, as well as procedures for complying with federal, state and local and DoD requirements and reporting of activities. Further details of the programs are summarized below.

2.1 The Installation Restoration Program

The Installation Restoration Program (IRP) was established in 1975 to assist in addressing contamination from hazardous and toxic materials at active Army installations. The Program defines a structured approach for assessing, evaluating and remediating sites on Army lands which have been distressed as a result of past practices. The program has many of the same components as the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 and the Superfund Amendments and Reauthorization Act (SARA) of 1986, and provides for one of four categories of cleanup ranging from "no further action" (NFA) to "removal" (REM) to "interim remedial action" (IRA) to "remedial action" (RA). The specific requirements for a given site are determined on the basis of a series of investigations at the site commencing with a preliminary assessment and site inspection (PA/SI), continuing through to a full remedial investigation and feasibility study (RI/FS). Upon completion of the studies phase of the restoration program, a proposed plan (PP) is presented to the public and following resolution of issues identified during the period for public comment, a "record of decision" (ROD) is issued which documents the remedy selected by the Army and approved by EPA, provides the rationale for the remedy, and outlines criteria to ensure that the remediation is conducted to an approved set of standards. Following issuance of the ROD, remedial design (RD) and substantial implementation of the remedial action (RA) must be initiated within fifteen months.

Responsibility for implementation of activity under the active sites portion of the IRP falls under several levels of command. Overall responsibility for all Army environmental activities rests with the Assistant Secretary for the Army (Installations, Logistics and Environment) (ASA/I,L&E) assisted by the Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) (DASA/ESOH). Management of environmental programs is provided by the Assistant Chief of Staff for Installation Management (ACSIM). ACSIM is assisted with the implementation of the IRP by the Army Environmental Center (AEC). The AEC, in turn, provides guidance through the Major Army Commands (MACOMs) to Installation Commanders (ICs) who are ultimately responsible for implementation of the IRP at their base.

2.2 The Formerly Used Defense Sites Program

The Formerly Used Defense Sites Program (FUDS) refers to the portion of the IRP which governs actions at distressed sites located on property which was formerly owned by the Army. The program provides guidelines for assessing, evaluating, and remediating sites which, at some stage in the past, became environmentally distressed while part of the Army complex. Guidelines for dealing with contamination from hazardous and toxic materials, including unexploded ordnance (UXO) and chemical, biological, and radioactive waste, are provided.

Responsibility for implementation of activity under the FUDS portion of the IRP falls under a somewhat different organizational path than the active sites IRP. As with the active sites IRP, overall responsibility for the Army environmental activities rests with ASA/IL&E, assisted by the DASA/ESOH. The Army administers not only the FUDS portion of the IRP for sites formerly owned by the Army, but also those formerly owned by the other members of the DoD complex. Management and implementation of the FUDS program for the DoD is provided by the U.S. Army Corps of Engineers (USACE).

2.3 The Base Realignment and Closure Cleanup Program

The Base Realignment and Closure Cleanup Program refers to actions authorized by the Defense Authorization Amendments and Base Closure Act of 1988 (BRAC 1) and the Defense Closure and Realignment Act of 1990 (BRAC 91, BRAC 93 and BRAC 95). The program, which is based on the IRP, defines the methods for identifying installations no longer deemed vital to the DoD complex, and procedures for implementing closure and realignment actions at these installations, including the restoration of distressed lands. In addition, implementation of BRAC actions are subject to compliance with the National Environmental Policy Act of 1969 (NEPA) to ensure that the relative technical and financial merits of restoration decisions are balanced. For example, the impact of disposal of restored property on the local real estate market may impact a decision on when to dispose of the property in order to avoid a negative impact on current property values.

Responsibility for implementation of activity under BRAC again falls under several levels of command. As with the other restoration programs, overall responsibility for Army environmental activities rests with ASA/IL&E, assisted by the DASA/ESOH. The BRAC office within ACSIM is responsible for managing BRAC cleanup activities and provides guidance to MACOMs who, in turn, may designate a BRAC environmental coordinator to oversee restoration activities.

In addition to the specific programs discussed above, a number of other federally mandated entities play central roles in Army restoration programs including:

- The Defense Environmental Restoration Account
- The Defense Environmental Restoration Program

2.3.1 The Defense Environmental Restoration Account

The Defense Environmental Restoration Account (DERA) was established in 1984 as part of the Defense Appropriation Act. Once a site has been selected for restoration under either the IRP or FUDS programs noted above, funds are transferred from the DoD to DERA where they become available for use in that specific project within a specified time period. Funding for BRAC actions is provided through the Base Closure Account (BCA).

2.3.2 The Defense Environmental Restoration Program

The Defense Environmental Restoration Program (DERP) was established as part of SARA in 1986 to provide a centralized management for restoration at all DoD sites except those funded under BRAC. As with the IRP, the program is implemented in accordance with other relevant legislation including CERCLA, SARA, and RCRA. Operating funds for DERP are provided through DERA.

CHAPTER 3. BROWNFIELDS REDEVELOPMENT

The EPA implemented the Brownfields Economic Redevelopment Initiative in 1995 to empower states, localities and other proponents for economic redevelopment to collaborate in assessing, restoring and redeveloping Brownfields. The term "Brownfields" has been used to describe sites that "are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination" (EPA, 1996).

Historically, Brownfields had been somewhat of a double-edged sword. For example, ignoring that a site in the center of an urban area is contaminated potentially poses severe health hazards to the public living and working nearby. On the other hand, finding out that the site is contaminated exposes the owners of the site to the liability documented in environmental regulations such as CERCLA. Further, the owners, whether or not they have anything to do with the actual contamination of the property, are responsible for the cost of cleaning up the site in a timely fashion. This immediate financial responsibility has been enough to deter owners from selling property with the result that large sites in urban areas have not been redeveloped. Further, laws imposing liability upon the owner of contaminated property have led to other problems. Financial institutions and private investors have been reluctant to fund Brownfields redevelopment for fear of becoming responsible for part of the cleanup under the EPA's Potentially Responsible Party (PRP) ruling, although the facts do not support this position. For example, out of the more than 30,000 sites listed in the CERCLIS database, there have only been forty cases in which the lender has been held liable as a PRP. Tax delinquency of properties suspected of being contaminated is also a growing concern for government agencies who are unwilling to foreclose for fear of becoming PRPs. This fear of municipalities to use foreclosure as an incentive to owners to pay back-taxes has caused a dramatic increase in tax delinquency throughout the nation.

3.1 Brownfields Action Agenda

To facilitate the progress of the Brownfields initiative, the EPA outlined the Brownfields Action Agenda in early 1995. The Action plan proposed four related initiatives aimed at encouraging what is considered to be an evolving approach to restoration and economic redevelopment. The four initiatives identified for implementation in the Action Agenda include:

- Brownfields Pilot Studies
- Clarification of Liability and Cleanup Issues
- Partnerships and Outreach
- Job Development and Training

The key objective of each of these initiatives is summarized below. The complete Brownfields Action Agenda Resource Kit, as issued in early 1996, (EPA, 1996) is included in Appendix A.

3.1.1 Brownfields Pilot Studies

The Brownfields Pilot Studies initiative is one where EPA is providing fifty selected states, cities, towns, counties and tribes resources with up to \$200,000 to examine possible redevelopment approaches and to explore opportunities for removal of regulatory barriers. The results from these pilot studies will be used to identify potential pitfalls in the approach, as well as to provide positive examples of the benefits of the initiative and thereby stimulate others to adopt the methodology.

3.1.2 Clarification of Liability, and Cleanup Issues

A major concern, notwithstanding the EPA's backing of the Brownfields initiative, are liability issues. As part of the Action Agenda, EPA is working with state and local organizations to develop guidelines to clarify the liability of the various participants in a Brownfields project.

3.1.3 Partnerships and Outreach

As the lead proponent of the Brownfields initiative, EPA is working with other federal, as well as state and local agencies, to foster partnerships and outreach within the Brownfields framework. A critical issue behind fostering these partnerships is to ensure that implementation of the initiative is relatively consistent between the different agencies involved and that expectations are realistically presented a priori.

3.1.4 Job Development and Training

To ensure that the workforce to fill opportunities available following redevelopment at a site under the Brownfields initiative are readily available and appropriately trained, EPA has sought to implement curricula changes at colleges and provide training opportunities in regions likely to benefit from a redevelopment program. In addition to increasing specific technical skills in a given area, these educational efforts are aimed at increasing environmental awareness so that further problems are not generated by the redevelopment undertaken.

3.2 Comparison of Brownfields and BRAC Programs

The missions of the Brownfields redevelopment initiative and the BRAC program are very similar. Both seek to restore environmentally distressed lands to conditions where risk to human health is removed and local economies can be positively impacted by any associated redevelopment activities. On the other hand, there are clearly some significant differences between the two initiatives. Since the purpose of this report is to investigate Brownfields Redevelopment as a restoration policy opportunity for the Army, a comparison of the initiatives is appropriate. The Future Land Use Working Group (FLUWG) of the Defense Environmental Response Task Force (DERTF) was tasked to perform such a comparison and released a status report in January 1996, which included a comparison of many of the key factors for both initiatives (Table 1).

BROWNFIELDS REDEVELOPMENT	BASE REALIGNMENT AND CLOSURE
Abandoned, idled or under-utilized property.	U.S. government-owned property with the potential to become abandoned, idled or under-utilized.
Usually in urban area.	Both urban and rural.
Unknown PRPs.	Known PRPs (DoD and other federal agencies).
Unknown level of contamination.	Extensive environmental surveys and remediation required before the property is transferred.
Most former industrial commercial properties are contaminated or suspected to be.	Not all of the property at closing bases are typically contaminated. Large tracts are uncontaminated and commercially reusable as is.
Uncertain liability for new owner. Perception of potentially unlimited liability for future owner/financier.	Certainty of liability for new owner. DoD must provide new owner with indemnification for contamination on the site when the property is transferred.
Potential environmental stigma associated with reusing property.	Potential environmental stigma associated with reusing property.
Little or no funding for remediation.	Funding for remediation that is protective of human health and the environment.
Easily transferable (in most states).	Difficult timely process to transfer.
Little or no funds available to develop a reuse/marketing plan.	Significant amount of funds provided to develop a reuse/marketing plan.
Cleanup and reuse may have an impact on a community's economy.	Cleanup and reuse usually has a significant impact on a community's economy.
Reuse protects Greenfields from being developed.	Reuse protects Greenfields from being developed.
Environmentally sound method to promote development in an area.	Environmentally sound method to promote development in an area.
Contamination usually not on scale that requires "federal interest" in remediation— not Superfund level of contamination.	Contaminated portions that are on the Superfund NPL and many tracts that have little or no contamination.
Usually a small facility or property.	Usually a large facility or property.
Only regulated by federal government if potentially large amounts of contaminants found on-site.	Regulated transfer by federal and state government.

Table 1. Comparison of Brownfields Redevelopment and BRAC Program (after FLUWG, 1996)

The FLUWG identified three main barriers to the reuse of Brownfields sites, which affect military sites differently, including:

- Potential liability
- Unknown contamination on the property
- Economic marketability

The first two of these factors were indicated by the FLUWG to be non-issues in base reuse "because of DoD's statutory requirements under CERCLA." Regarding the third factor, "economic marketability is treated differently at private Brownfield sites and former military facilities." The preliminary conclusions resulting from the FLUWG study of the two programs do not include any statements which suggest further study of Brownfields Redevelopment as a restoration policy opportunity for the Army and indicate that lessons learned from the Brownfields Program, such as in the marketing of property, can be transferred to BRAC.

3.3 Proposed Army Brownfields Policy Evaluation

Notwithstanding the preliminary findings of the FLUWG reported above, it is considered that Brownfields Redevelopment Initiative does represent an alternative restoration policy option for the Army which is worthy of further study. As indicated earlier in this report, any mechanism which can potentially facilitate this restoration process, even if it requires a significant "rethinking" of how the "Army does business," is worthy of consideration. It is considered that the preliminary arguments summarized by the FLUWG regarding the non-applicability of Brownfields Redevelopment for military sites are non-persuasive. The Brownfields approach is not to be considered as a replacement method for the existing programs that are in place to restore Army lands, rather its value is that it can represent an alternative method which may be applicable at some sites and may prove to be a more cost-effective and efficient way to deal with restoration.

From a financial perspective, the Brownfields Redevelopment Initiative reflects a significant departure from existing Army restoration programs. Presently, all resources come directly from the federal government; thus, the burden is fully taken by the taxpayers. This sole source of funding for Army restoration also results in time restrictions on how much restoration can be accomplished in any fiscal year. Opening up the opportunity for private funds to complement the existing restoration mechanisms can minimize both these fiscal and temporal restrictions.

There are presently a number of legislative barriers to use of the Brownfields Redevelopment Program for military sites. Clearly, the statutory requirements under CERCLA, which require cleanup of any military site prior to it being transferred, are prohibitive at present. However, this is legislation that was enacted more than a decade ago when the consequences of other portions of the same legislation (which are now known to be the source of many of the Brownfields sites, as discussed above) were not recognized. If Brownfields Redevelopment can be shown to be a viable restoration approach, then legislation can be rewritten to remove any present barriers.

Arguments that DERA is a fenced account and thus no funds can be added to what is allocated by congress are also non-persuasive. If new legislation permits the transfer of military lands before they are restored, then the status of DERA as a fenced account is not impacted, since restoration of a site is achieved by transferring the site outside the military complex, rather than by transferring additional financial resources into DERA.

A critical factor in the success of an Army Brownfields Program may be the degree to which state and other local agencies and the Army cooperate. It is possible, for example, that an approach whereby the Army is responsible for all stages of assessment at a site before it is transferred to a state, local or private redeveloper, may have important benefits. In that manner, the concerns identified by FLUWG regarding unknown contamination and liability can be minimized, since all assessment is performed in accordance with existing legislation which also governs the IRP and FUDS programs. Further, requiring that substantial initiation of restoration by the non-military redeveloper within a specified time period of transfer of the lands outside the military complex (as with the transfer of funds to DERA for IRP and FUDS cleanup) can ensure that the assessment and remediation activities are performed in an integrated manner.

To conduct further evaluation of the merits of the creation of an Army Brownfields Redevelopment program to complement existing restoration programs, it is recommended that a study be conducted by a contractor from outside the DoD complex to fully identify all legislative, technical and economic advantages of pursuing such an initiative. The contractor should be required to work closely with personnel from within the DoD complex, as well as other federal and state agencies to ensure that all constraints are fully addressed.

BROWNFIELDS PILOT RESOURCE KIT

APPENDIX A

THE BROWNFIELDS ACTION AGENDA

The U.S. Environmental Protection Agency (EPA) firmly believes that environmental cleanup is a building block to economic development, not a stumbling block—that revitalizing contaminated property must go hand in hand with bringing life and economic vitality back to the community. EPA's Brownfields Economic Redevelopment Initiative will empower states, localities, and other agents of economic redevelopment to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse Brownfields. Brownfields are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. Benefits of the Brownfields Initiative will be realized in affected communities through a cleaner environment, new jobs, an enhanced tax base, and a sense of optimism about the future.

On January 25, 1995, EPA Administrator Carol Browner announced the Brownfields Action Agenda which outlines EPA's activities and future plans to help states and localities implement and realize the benefits of the Brownfields Initiative. Implementation of the Brownfields Action Agenda will help reverse the spiral of unaddressed contamination, declining property values, and increased unemployment often found in inner city industrial areas, while maintaining deterrents to future contamination and EPA's focus on assessing and cleaning up "worst sites first." The Brownfields Action Agenda is a "work in progress" and will continue to evolve as EPA seeks advice and input from a broad range of stakeholders.

The efforts outlined in the Brownfields Action Agenda can be grouped into four broad and overlapping categories:

I. Brownfields Pilots

EPA will select fifty states, cities, towns, counties, and tribes for Brownfields pilots by the end of 1996. The pilots, each funded at up to \$200,000 over two years, will test redevelopment models, direct special efforts toward removing regulatory barriers without sacrificing protectiveness, and facilitate coordinated public and private efforts at the federal, state, and local levels.

II Clarification of Liability and Cleanup Issues

EPA is working with states and localities to develop and issue guidances that will clarify the liability of prospective purchasers, lenders, property owners, and others regarding their association with and activities at a site. These guidances will clearly state EPA's decision to use its enforcement discretion in specific situations and not

pursue such parties. EPA anticipates that these clear statements will alleviate concerns these parties may have and will facilitate their involvement in cleanup and redevelopment.

III. Partnerships and Outreach

EPA is committed to building partnerships with states, cities, community representatives and among federal agencies to develop strategies for promoting public participation and community involvement in Brownfields decision-making.

IV. Job Development and Training

EPA Brownfields staff, local contacts, and community colleges have established partnerships to develop long-term plans for fostering workforce development through environmental education, ensure the recruitment of students from socioeconomically disadvantaged communities, provide quality worker training, and allow local residents an opportunity to qualify for jobs developed as a result of Brownfields efforts.

This document outlines the specific activities planned under each of these four areas and their associated benefits.

I. BROWNFIELDS PILOTS

Brownfields pilots are intended to provide EPA, states, and localities with useful information and new strategies for promoting a unified approach to environmental assessment, cleanup, and redevelopment. Experience gained from the pilots, along with partnerships and outreach activities, will provide a growing knowledge base to help direct the Brownfields Initiative.

Through the Brownfields pilot program, EPA will work with cooperative agreement recipients and other stakeholders to better understand and overcome unnecessary or perceived liability barriers to the cleanup and redevelopment of Brownfields. EPA has already seen dramatic results from a \$200,000 pilot awarded to Cuyahoga County (Cleveland), Ohio, in November 1993. This was the first *National Brownfields Pilot* funded by EPA. As a result of this pilot, \$1.6 million in private cleanup dollars has been leveraged, \$110,000 in private foundation money has been invested, and over \$625,000 has been generated in new tax dollars. In addition to these evolving numbers, nearly 100 new jobs have been created, and additional jobs are expected in 1996. Seventeen additional *National Pilots* are currently underway in Baltimore, MD; Birmingham, AL; Bridgeport, CT; Detroit, MI; Indianapolis, IN; Knoxville, TN; Laredo, TX; Louisville, KY; New Orleans, LA; Northampton County-Cape Charles, VA; Oregon Mill Sites; Richmond, VA; Rochester, NY; Sacramento, CA; St. Louis, MO; Trenton, NJ; and West Central Municipal Conference, IL. In October 1995, EPA announced eleven *Regional Pilots* in Boston, MA; Buffalo, NY; Dallas, TX; Duwamish, WA; Illinois; Indiana; Minnesota; Philadelphia, PA; Pittsburgh, PA; Sand Creek Corridor, CO; and West Jordan, UT. Ten additional *National Pilots* will be announced in January 1996.

Specific activities and their associated benefits include:

Brownfields Economic Redevelopment Pilots (1995-1998)

Actions

- EPA will fund at least fifty Brownfields pilots by the end of 1996, at up to \$200,000 each, to support creative two-year demonstrations of assessment activities leading to cleanup and redevelopment solutions.
- EPA awarded the first pilot in Cleveland, Ohio in 1993.
- EPA awarded two pilots at the end of 1994 in Bridgeport, Connecticut and Richmond, Virginia.
- EPA awarded fifteen additional National Pilots in July 1995.
- EPA awarded eleven Regional Pilots in October 1995.
- EPA will award ten new National Pilots in January 1996.

Benefits

- Encourages community groups, investors, lenders, developers, and other affected parties to join forces and develop creative solutions to assess and clean up contaminated sites and return them to productive use;
- Provides concrete data on Brownfields issues that highlight positive aspects of EPA's waste policies and identify areas that could be improved; and
- Provides models of administrative, managerial, and technical processes from which states and localities can learn as they set up processes to assess, clean up, and redevelop sites of their own.

II. CLARIFICATION OF LIABILITY AND CLEANUP ISSUES

A significant barrier to assessing, cleaning up, and redeveloping Brownfields is the public's apprehension about becoming involved with a site for fear of inheriting cleanup liabilities for contamination they did not create. EPA is attempting to address the concerns of communities, lenders, property owners, municipalities, and others by clarifying relevant liability issues. Clarification of liability issues will encourage the purchase, cleanup, and redevelopment of sites that might otherwise be avoided due to an exaggerated sense of the risk of incurring federal liability.

Specific liability issues targeted by the Brownfields Initiative to date include prospective purchaser liability, the liability of owners of property containing contaminated aquifers, lender liability, municipal acquisition liability, and lender liability at Underground Storage Tank (UST) sites. EPA also archived 24,000 of the 40,000 sites which had been listed in the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS) database where no further federal action is planned. This action should reduce any stigma associated with federal involvement at these sites and remove potential obstacles to their cleanup and redevelopment.

Specific activities and their associated benefits in this area include:

Archiving 24,000 CERCLIS Sites

(Completed February 1995)

Actions

- EPA archived approximately 24,000 sites, out of a previous total of 40,000 sites, from CERCLIS. Many of these sites were found to be clean, while others are being addressed by state cleanup programs.
- EPA plans to improve access to information gathered during the investigations conducted at these sites.
- EPA plans to further clarify the risk, or lack of risk, of incurring federal liability at these sites.

Benefits

- Clarifies that the federal government is unlikely to have any further Superfund interest in these archived sites;
- Clarifies for the lending and business communities the distinction between archived sites and those remaining on CERCLIS; and
- Encourages cleanup (if any contamination remains) and economic redevelopment of these properties.

Guidance on Agreements with Prospective Purchasers of Contaminated Property (Issued May 1995)

Actions

- EPA issued guidance on Agreements with Prospective Purchaser of Contaminated Property in May 1995 which expands the circumstances under which EPA will consider such agreements. The guidance states the situations under which EPA may enter into an agreement to not file a lawsuit against a prospective purchaser of a contaminated property for contamination that existed prior to the purchase.

Benefits

- Eliminates much of the “retroactive liability” concern associated with purchasing contaminated or previously contaminated property where some evidence of federal environmental interest exists; and
- Encourages parties to purchase, assess, clean up, and redevelop Brownfields they might otherwise avoid due to a reasonable fear of incurring federal liability.

Policy Toward Owners of Property Containing Contaminated Aquifers (Issued May 1995)

Actions

- EPA issued a general policy statement regarding the liability of owners of uncontaminated property containing groundwater that has been contaminated by a neighboring property. The policy statement provides assurance that EPA does not anticipate suing the property owner for groundwater contamination if the owner did not cause or contribute to the contamination.

Benefits

- Removes major roadblocks to the redevelopment of properties containing contaminated aquifers; and
- Allows these properties to be bought and sold free from the impediment of direct federal liability.

Land Use in the CERCLA Remedy Selection Process (Issued May 1995)

Actions

- EPA issued guidance regarding the increased consideration of anticipated future land uses in remedy selection decisions at National Priorities List (NPL) sites.
- The guidance encourages discussions among local land use planning authorities, other officials, and the community as early as possible in the site assessment process.

Benefits

- Ensures that EPA considers future land use during Superfund cleanups
- Fosters greater community support for selected remedies; and
- Facilitates expedited, more cost-effective cleanups.

Model Comfort Letter for Transfers of Federally Owned Property

(Issued August 1995)

Actions

- EPA issued a Model Comfort Letter Clarifying NPL Listing, Uncontaminated Parcel Identification, and CERCLA Liability Involving Transfers of Federally Owned Property which addresses various issues concerning perceived NPL stigma and Superfund liability.
- The letter clarifies some common misunderstandings about NPL listing and CERCLA liability and highlights certain provisions concerning the transfer of federally owned properties. Additionally, it clarifies that parcels of military bases identified as uncontaminated under the Community Environmental Response Facilitation Act (CERFA) are not part of the NPL listing.

Benefits

- Reduces the perceived NPL stigma at closing military bases; and
- Encourages the redevelopment of decommissioned military bases.

Underground Storage Tank (UST) Lender Liability Rule

(Issued September 1995)

Actions

- EPA issued a regulation clarifying when a lender may be exempt from UST liability.

Benefits

- Removes a major barrier to financing the cleanup and redevelopment of UST sites, which constitute a large percentage of Brownfields nationwide.

Policy on CERCLA Enforcement Against Lenders and Government Entities That Acquire Property Involuntarily

(Issued September 1995)

Actions

- EPA and the Department of Justice (DOJ) jointly issued a memo explaining their policy on CERCLA enforcement against lenders and government entities that acquire property involuntarily. The memo states that EPA and DOJ intend to apply as guidance the provisions of the "Lender Liability Rule" promulgated in 1992.
- EPA and DOJ will not pursue cleanup costs from those lenders that provide money to an owner or developer of a contaminated property, but do not actively participate in daily management of the property.
- CERCLA releases from liability governmental units that involuntarily take ownership of property through the operation of federal, state, or local law. EPA clarified which actions would be considered "involuntary" and would therefore not subject the governmental unit to potential liability.

Benefits

- Increases the availability of financing for parties willing to assess, clean up, and redevelop sites by assuring lenders that EPA will not hold them liable for cleanup costs of land they simply accepted as collateral for a loan;
- Fosters economic redevelopment efforts by removing barriers that hinder financing options; and
- Encourages municipalities to start the process of getting a site assessed, cleaned up, and put back into productive use by addressing concerns about federal Superfund liability.

Draft Soil Screening Guidance

(Issued December 1994)

Action

- EPA issued a draft guidance which will help decision-makers quickly determine which portions of a site require further study and which pose little risk to human health and may therefore be ready for redevelopment even without extensive cleanup.

Benefits

- Streamlines the study of toxic chemicals in soils at Superfund sites;
- Removes barriers that currently hinder the redevelopment of sites, or portions thereof, that pose little risk to human health; and
- Allows cleanup efforts and funding to target those areas truly requiring remediation.

Risk-Based Corrective Action (RBCA) at Underground Storage Tank Sites

(Initiated 1994)

Actions

- EPA has adopted the Risk-Based Corrective Action (RBCA), decision-making model at UST sites as a method of risk management. RBCA is a framework for considering both the contamination and the site-specific factors to determine the danger to human health and the environment from a given release.
- EPA is providing training to state UST program staff in this approach, enabling them to create systems appropriate for their own states.

Benefits

- Allows environmental response action at all contaminated UST sites, while focusing public cleanup and oversight resources on those sites posing the highest risk; and
- Allows more UST sites to be "closed" and thus available for reuse.

Corrective Action at RCRA Sites

(Planned December 1995)

Actions

- EPA is revising its proposed corrective action regulations (known as the "Subpart S" rule) for Resource Conservation and Recovery Act (RCRA) sites. EPA's Corrective Action program exists to clean up currently operating hazardous waste treatment, storage, or disposal facilities that are seeking, or are required to have, a permit under RCRA. These sites often contain inactive, contaminated plots awaiting cleanup.
- EPA plans to issue a notice explaining the status of this action in December 1995 and to finalize and repropose this part of the rule in spring 1997.

Benefits

- Provides incentives for streamlined remediations at operating RCRA sites;
- Creates a consistent, holistic approach to RCRA facility cleanups; and
- Establishes protective, common-sense cleanup goals at RCRA sites.

III. PARTNERSHIPS AND OUTREACH

EPA is committed to building partnerships with states, cities, and community representatives to develop strategies for promoting public participation and community involvement in Brownfields decision-making. EPA will continue to work with other federal agencies, on a national and local level, to ensure a coordinated federal approach to encouraging the cleanup and redevelopment of Brownfields. EPA is also forming partnerships with states, cities, and other for-profit and non-profit organizations to streamline and improve Brownfields efforts.

Specific activities and their associated benefits include:

Regional Brownfields Coordinators

(Completed Spring 1995)

Actions

- Each of EPA's ten regions has designated a Brownfields Coordinator and Brownfields team members.

Benefits

- Helps guide region-specific projects to promote Brownfields assessment, cleanup, and redevelopment;
- Enhances communication between EPA Headquarters and the regions, thereby keeping both abreast of new information and ideas in the Brownfields arena; and
- Provides a forum for EPA Headquarters and the regions to work together toward the development of national Brownfields Initiative strategies.

State Voluntary Cleanup Programs (Workgroup formed spring 1995)

Actions

- EPA is working with states, other federal agencies, and the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) to assess how its possible endorsement of state voluntary cleanup programs could encourage Brownfields cleanup and redevelopment by assuring property owners that state approval of a voluntary cleanup holds virtually the same authority as federal approval.

Benefits

- Mitigates the threat of federal involvement at sites cleaned up under "endorsed" state programs;
- Streamlines the cleanup and redevelopment processes by eliminating any perceived need for site-specific federal sign-off at sites cleaned up under a state voluntary cleanup program;
- Helps reduce the transaction costs of cleaning up Brownfields, thereby clearing the way for traditional market forces to initiate redevelopment; and
- Allows federal cleanup efforts and funding to target the "worst" sites first.

Revised Community Reinvestment Act (CRA) (Issued May 1995)

Actions

- EPA coordinated with the Office of the Comptroller of Currency to revise the Community Reinvestment Act (CRA) to support the goals of the Brownfields Initiative. Under the CRA, enacted in 1977, financial institutions are required to make loans to meet the needs of their communities, including low- and moderate-income areas.
- The revised CRA regulations allow banks to meet their CRA obligations by making loans for the cleanup or redevelopment of Brownfields as part of their community revitalization efforts.

Benefits

- Provides incentive for banks to finance Brownfields projects; and
- Represents the first time banks have been given CRA credit for any environmentally-related lending.

NEJAC's Public Dialogues on Urban Revitalization and Brownfields

(Conducted summer 1995; follow-up ongoing)

Actions

- The National Environmental Justice Advisory Council (NEJAC) conducted a series of one-day dialogues across the country in an effort to involve community groups and environmental justice advocates in the Brownfields Initiative by encouraging them to discuss their hopes, concerns, and recommendations for implementation in their cities.
- Public dialogues were conducted in Boston, MA; Philadelphia, PA; Detroit, MI; Oakland, CA; and Atlanta, GA.
- NEJAC plans to issue a report that will include a summary of the Public Dialogues and subsequent recommendations for improvements to the Brownfields Initiative in November 1995.

Benefits

- Provides communities with an opportunity to discuss grassroots issues related to urban revitalization and Brownfields, and to develop innovative solutions to Brownfields-related problems ;
- Serves as an effective mechanism for disseminating Brownfields and urban revitalization information to the public;
- Allows EPA to gather input from and develop partnerships with affected communities;
- Helps EPA develop recommendations for Brownfields policy guidance, grant criteria, regulatory developments, and program activities; and
- Connects other federal agencies to communities to identify and address problems related to grassroots urban revitalization.

Intergovernmental Personnel Assignments (IPAs) to States and Municipalities

(Ongoing; at least one per region by December 1995)

Actions

- EPA has assigned eight staff members, through IPAs, to help develop state and local Brownfields programs. Currently, two staff members each are assigned to Chicago, Illinois and within the State of Colorado; and one each to Dallas, Texas; Detroit, Michigan; East Chicago, Indiana; and East Palo Alto, California. Additionally, one staff member will be stationed in Los Angeles, California.

Benefits

- Helps EPA develop an understanding of the challenges faced at the state and local levels in implementing assessment, cleanup, and redevelopment efforts; and
- Enhances the Brownfields Initiative by promoting dialogue and encouraging understanding among federal, state, and local environmental agencies with common environmental and redevelopment goals.

Partnerships with Other federal Agencies

(Ongoing)

Actions

- EPA signed a Memorandum of Understanding (MOU) with the Economic Development Administration of the Department of Commerce to consult on economic redevelopment and reuse of Brownfields to ensure that sound environmental and economic development principles are followed, and to share knowledge and serve on advisory groups regarding Brownfields projects.
- EPA is working with the Department of Labor (DOL) to provide the youth of Brownfields communities with environmental training and job opportunities through DOL's Job Corps program.
- EPA is working with the Department of Housing and Urban Development (HUD) to understand the factors that impact urban investment and redevelopment decisions, and to collaborate in cities designated as Enterprise Zones/Enterprise Communities (EZ/EC) , where appropriate.

Benefits

- Provides a federal forum for understanding and assisting in the transition from site assessment and cleanup to site redevelopment;
- Assures that residents of Brownfields communities are trained for jobs that will allow them to benefit professionally from industrial and commercial activities associated with site cleanup;
- Provides valuable information to ensure the successful evolution of the Brownfields Initiative; and
- Provides a more comprehensive federal approach in local communities through more effective coordination.

Common Sense Initiative (CSI) Industry Groups

(Ongoing)

Actions

- EPA launched the Common Sense Initiative (CSI) last year to work with selected industries, environmental and public interest groups, state regulators, and other stakeholders to achieve “cleaner, cheaper, and smarter” environmental protection. EPA will seek the input of CSI industry sector groups on relevant Brownfields activities.
- The Iron and Steel CSI sector group is already developing a Brownfields strategy, and has started discussions on possible project proposals.

Benefits

- Provides the opportunity to focus on industry-specific solutions to the economic redevelopment challenges of certain Brownfields.

Research Efforts

(Ongoing, initiated in 1993)

Actions

- EPA is funding a series of studies that explore the scope and nature of the Brownfields dilemma. Partners in these studies will include for-profit, nonprofit, and government entities.
- EPA and HUD have conducted a joint research project to obtain information on factors impacting urban investment and redevelopment decisions. Both EPA and HUD recognize that to facilitate the assessment, cleanup, reuse, and redevelopment of Brownfields—legal, financial, regulatory impediments, and opportunities must be considered.
- EPA and DOL have joined forces in an effort to better understand the impact that environmental hazards and the environmental regulatory process may have on urban redevelopment. The study will also examine the role of institutional and organizational structures, both in the private and public sectors, in determining how risks affect environmentally-sensitive investment decisions.
- EPA and the Institute for Responsible Management (IRM) have entered into a cooperative agreement to provide assistance to States and localities that are attempting to address and promote appropriate ~~use of~~ hazardous waste sites.
- EPA is conducting a study to determine the extent of existing risk transfer mechanisms (that is, environmental liability insurance), the risks these mechanisms actually cover, and the impediments for future transfer of risk. EPA will then determine opportunities for encouraging the availability and use of these mechanisms to further the assessment, cleanup, and redevelopment of Brownfields.

Benefits

- Provides valuable information that will make Brownfields pilots and independent assessment, cleanup, and redevelopment efforts better focused and more effective;
- Helps EPA understand and convey the lessons of the pilots to one another and to other interested states, municipalities, tribes, and communities; and
- Provides a foundation for encouraging investors and developers to invest in and develop Brownfields.

IV. JOB DEVELOPMENT AND TRAINING

EPA Brownfields staff, local contacts, and community colleges have established local partnerships to develop long-term plans for fostering workforce development through environmental education, ensuring the recruitment of students from socioeconomically disadvantaged communities, and providing quality worker training to local residents so they can qualify for jobs developed as a result of Brownfields efforts.

Specific activities and their associated benefits include:

Hazardous Materials Training and Research Institute (HMTRI) (Ongoing)

Actions

- EPA is working with the Hazardous Materials Training and Research Institute (HMTRI) to expand training and curriculum development at community colleges located near Brownfields pilot sites.

Benefits

- Fosters workforce development in Brownfields pilot communities; and
- Prepares local citizens for Brownfields-related employment in their communities.

Environmental Workforce Initiative, Cleveland, Ohio (Ongoing)

Actions

- EPA provided Cuyahoga Community College (Tri-C) in Cleveland with funding to improve local workforce development through environmental education, outreach, and training.
- Tri-C staff are conducting community outreach activities to recruit students from socioeconomically disadvantaged communities and others to provide environmental information to environmental justice (EJ) neighborhoods.
- Tri-C established a community/business task force to ensure broad participation and input in these efforts.

Benefits

- Ensures that Cleveland's redevelopment efforts benefit from the trained workforce needed to revitalize contaminated properties;
- Involves the community in the Brownfields effort;
- Informs community members of how the Brownfields Initiative will affect them; and
- Links local residents to emerging local job opportunities.

Rio Hondo Environmental Education and Training Center, Whittier, California
(Ongoing)

Actions

- The Rio Hondo Community College District, through an agreement with EPA, has established an environmental education and job training center to provide comprehensive technician-level training on Superfund-related subjects, issues, and methodologies. The college is adjacent to one of Los Angeles County's landfill sites. The college's student enrollment is indicative of the community population—over 64% Hispanic and 33% from other minority groups.

Benefits

- Assures that the area's redevelopment efforts have the trained workforce needed to revitalize contaminated properties; and
- Involves community members in the Brownfields effort.

Environmental Job Training and Education Summit, Bridgeport, Connecticut
(Ongoing)

Actions

- The City of Bridgeport's Office of Planning and Economic Development (OPED) held an Environmental Education and Job Training Summit in June 1995 to share information and ideas on the Brownfields Initiative.
- The city continues to coordinate closely with Housatonic Community College, Sacred Heart University, and community-based organizations that are developing quality environmental education and training programs.

Benefits

- Provides a forum for community, government, and business representatives to discuss relevant issues and plan collaborative efforts;
- Involves community members in the Brownfields effort; and
- Ensures that the area's redevelopment efforts have the trained workforce needed to revitalize contaminated properties.

INDEX

A

acquisition 17
ACSIM vii, 3, 4
AEC vii, 3
aquifers 17, 18
ASA/IL&E vii, 4
ASTSWMO vii, 22
Atlanta 23

B

Baltimore 15
BCA vii, 5, 20
benefits 8, 11, 13, 14, 15, 16, 17, 18, 19,
20, 21, 22, 23, 24, 25, 26, 27, 28
Birmingham 15
Boston 15, 23
BRAC ix, 4, 5, 8, 9, 10
Bridgeport 15, 28
Browner 13
Brownfield i, ii, iii, ix,
1, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 19,
22, 23, 24, 26, 27, 28
Buffalo 15

C

California 24, 28
Cape 15
CERCLA 3, 5, 7, 10, 18, 19
CERCLIS vii, 7, 17
CERFA vii, 19
Chicago 24
cleanup ix, 3, 4, 7, 8, 9, 10, 11, 13, 14,
15, 17, 19, 20, 21, 22, 23, 24, 25, 26
Cleveland 15, 27
closure ix, 3, 4, 5, 9
Colorado 24
compliance 4
Comptroller 23
congress 11
Connecticut 15, 28
conservation vii, 21
contamination
iii, 3, 4, 7, 9, 10, 11, 13, 17, 18, 20
CRA vii, 23
CSI vii, 25
Cuyahoga 15, 27

D

Dallas 15, 24
DASA/ESOH vii, 3, 4
database 7, 17
decision-making 14, 20, 22
DERA vii, 5, 11
DERP vii, 5
DERTF vii, 8
Detroit 15, 23, 24
dialogue 24
Duwamish 15

E

education 14, 27, 28
enforcement 13, 19
Enterprise Zones vii, 24
Environmental Justice vii, 23, 27
EPA iii,, vii,, 1,, 3, 7 8, 13, 14, 15, 17,
18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28
evaluation iii, ix, 10, 11

F

FLUWG vii, 8, 9, 10, 11
future iii, vii 1, 8, 9, 13, 18, 25

G

Georgia v
Greenfield 9
groundwater 18

H

hazardous waste 21, 25
HMTRI vii, 27
Hondo 28
Housatonic 28
HUD vii, 24, 25
human health 8, 20

I

Illinois 15, 24
implementation 3, 4, 7, 8, 13, 23
indemnification 9
Indiana 15, 24
Indianapolis 15
industry 25
investigation vii, 3

investment vii, 23, 24, 25
IRA 3
IRM vii, 25
IRP vii, 3, 4, 5, 11

K

Knoxville 15

L

Laredo 15
law 7, 18, 19
legislation 1, 5, 10, 11
liabilities 17
Los Angeles 24, 28
Louisville 15

M

MACOMs 3, 4
Michigan 24
Minnesota 15

N

NEJAC vii, 23
NEPA vii, 4
New Orleans 15
NFA vii, 3
Northampton 15
NPL vii, 9, 18, 19

O

Oakland 23
Ohio 15, 27
OPED vii, 28
ordnance 4
Oregon 15
outreach 7, 8, 14, 15, 22, 27
owner iii, 1, 7, 9, 13, 17, 18, 19, 22

P

PA, iii, vii, 1, 3, 4, 7, 8, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28
Palo Alto 24
partnership(s) ix, 7, 8, 14, 15, 22, 23, 24, 27
permit(s) 11, 21
Philadelphia 15, 23
Pittsburgh 15
planning vii, 18, 28

policy(ies) i, iii, v, vii, ix, 1, 4, 8, 10, 16, 18, 19, 23
PRP 7

R

RA vii, 3
range 13
RBCA vii, 20
RCRA vii, 5, 21
RD vii, 3
recruitment 14, 27
Redevelopment i, ii, iii, ix, 1, 7, 8, 9, 10, 11, 13, 14, 15, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28
regulators 25
REM 3
remediation 3, 9, 11, 20
research vii, 25, 27
restoration i, iii, vii, ix, 1, 3, 4, 5, 7, 8, 10, 11
reuse 9, 10, 13, 20, 24, 25
revitalization 23
Richmond 15
risk vii, 8, 17, 20, 25
Rochester 15
ROD vii, 3
RVFS 3

S

Sacramento 15
SARA vii, 3, 5
soil(s) 20
staff vii, 3, 14, 20, 24, 27
stakeholder 13, 15, 25
standard(s) 3
studies ix, 3, 7, 8, 25
Superfund vii, 3, 9, 17, 18, 19, 20, 28

T

taxes 7
Texas 24
toxic materials 3, 4
training vii, ix, 7, 8, 14, 20, 24, 27, 28
treatment 21
Trenton 15
tribes 8, 13, 26

U

Underground Storage Tank vii, 17, 19, 20
unemployment 13
unexploded ordnance 4

V

Virginia 15

W

Whittier 28

workforce 8, 14, 27, 28